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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/509,280	03/20/2000	PETER ROWAN KELLOCK	SPR6147P0010	3713

32116 7590 01/22/2009
WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
500 W. MADISON STREET
SUITE 3800
CHICAGO, IL 60661

EXAMINER

AN, SHAWN S

ART UNIT	PAPER NUMBER
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2621

MAIL DATE	DELIVERY MODE
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01/22/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/509,280	Applicant(s) KELLOCK ET AL.	
	Examiner SHAWN AN	Art Unit 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1-7,9,10,15,16,19,20,22,24-30,32,33,38,39,42,43,45,47-53,55,56,60-62,65,66,68 and 100-117.

Continuation of Disposition of Claims: Claims rejected are 1-7,9,10,15,16,19,20,22,24-30,32,33,38,39,42,43,45,47-53,55,56,60-62,65,66,68 and 100-117.

DETAILED ACTION

Reopen Prosecution

1. In view of the Pre-appeal brief as filed on 4/18/08, and the pre-appeal conference with the supervisor, Mehrdad Dastouri, and the primary Examiner, Shawn An, PROSECUTION IS HEREBY REOPENED. The Office action is set forth below.

To avoid abandonment of the application, Appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then Appellant must pay the difference between the increased fees and the amount previously paid.

Response to Arguments

2. Applicant's arguments with respect to pre-appealed claims have been carefully considered, and after a thoughtful review, the last Office action has been hereby partially vacated. Furthermore, Applicant's arguments with respect to claims pertaining to the 35 USC § 101 are not persuasive in view of the following ground(s) of rejection.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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4. Claims 1-7, 9-10, 15-16, 19-20, 22, 47-53, 55-56, 60-62, 65-66, 68, 100-105, and 112-117 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 47 and all of its dependent claims and claim 117 reciting a computer program product are considered non-statutory subject matter, since Applicant's specification clearly defines the computer readable medium as a radio (signal) or infra-red transmission channel (signal bandwidth) between the computer and another device, a computer readable card such as a PCMCIA card, and the internet and intranets including email transmissions (carrier wave, signal) and information recorded on websites and the like, wherein the foregoing is merely exemplary of relevant computer readable medium (Applicant; page 36, lines 5-14).

Claim 1 and all of its dependent claims and claim 105 reciting a system are considered non-statutory subject matter, since Applicant also indicates (in addition to the system (28) of Fig. 11) the system described with reference to Figures 1 to 10 may be implemented as software, or a computer program, executing on the computer (which is not embodied in a computer readable medium) (Applicant; page 35, lines 7-9).

Therefore, claim 1 and all of its dependent claims and claim 105 are rejected based on the recited "system" as being software or program, which is clearly not embodied in a computer readable medium.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to *Shawn An* whose telephone number is 571-272-7324.

6. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


/SHAWN AN/

Primary Examiner, Art Unit 2621

1/19/09

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	09/509,280	KELLOCK ET AL.	
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